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10/811,595	03/29/2004	Martin K. Gustafson	PC-1696	2671
23717	7590	02/02/2006		
LAW OFFICES OF BRIAN S STEINBERGER 101 BREVARD AVENUE COCOA, FL 32922			EXAMINER GRAYSAY, TAMARA L	
			ART UNIT 3636	PAPER NUMBER
DATE MAILED: 02/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/811,595

Applicant(s)

GUSTAFSON ET AL.

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date (1page).
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election***

1. Claims 12-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on 19 January 2006.

### ***Response to Traversal***

2. Applicant's election with traverse of Invention I, Claims 1-11, drawn to a tent enclosure, classified in class 135, subclass 165, in the reply filed on 19 January 2006 is acknowledged. The traversal is on the ground(s) that:

- a. As a policy consideration, a restriction requirement would suggest that separate inventions exists that inherently would include separate prior art searches, examinations, examiners, etc. AND
- b. The examiner has not stated that separate searches and separate examination and separate art units are necessary to examine these inventions. AND
- c. Multiple examinations on the two inventions would be repetitive and excessive, create unnecessary financial burdens for the applicant and the Office, and create undue time burdens on the applicant and the Office, especially if the same art unit and/or examiner can search both inventions.

This is not found persuasive because of the following:

- First, the standard for restriction between the product and process of using claims requires one-way distinctness. The one-way distinctness is discussed in detail in the previous Office action. Specifically, the examiner has shown, by way of example, that the process can be practiced with another materially different product, i.e., the process as

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claimed does not require the collapsible frame and could be performed using an enclosure that hangs from a hook or ceiling, for example.

- Second, in addition to the one-way distinctness requirement the examiner must provide reason as to why the search creates an undue burden. The examiner has pointed out that the inventions: (I) a tent enclosure and (II) a process of assembling an enclosure as presented in the claims of the present application, have acquired a separate status in the art because of their recognized divergent subject matter. In other words, tents are diverse from processes of assembling tents, especially when the process of using a tent does not require the particulars of the tent, as is evidenced by the claims in the present application.
- Finally, in response to applicant's argument (a), the examiner followed current Office policy as it relates to restriction practice for the claimed product and process of using inventions.
- In response to applicant's argument (b), current restriction practice does not require the examiner to state that separate searches, separate examination, and separate art units are necessary.
- In response to applicant's argument (c), the examiner has stated that the product and process of using inventions have acquired separate status in the art because of their recognized divergent subject matter, thereby meeting the undue burden test.

**The requirement is still deemed proper and is therefore made FINAL.**

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Drawings*

4. The drawings are objected to because of the following:
  - a. Reference character 530 appears at the upper half of FIG. 7, but is not included in the specification. 37 CFR 1.84(p)(5).
  - b. The drawings must show every feature of the invention specified in the claims.

Therefore, the sheet material including multi-layers completely impervious, as recited in claim 4, must be shown or the feature(s) canceled from the claim(s). 37 CFR 1.83(a).

No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

5. The disclosure is objected to because of the following informalities:
  - a. 2:12: [an described] should be and described.

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- b. 3:26: HEPA should be spelled out because while the use of acronyms is acceptable, each should be spelled out at least at the first occurrence.
- c. 5:24: [patents] should be patent because only one patent is listed thereafter.
- d. 7:20 (at Table 1): [Syndrome] should be Syndrome.
- e. 7:27: [10] should be 20.
- f. 7:30: [10] should be 10'.
- g. 8:14: [multi-] should be multi-.
- h. 9:10: [UV (ultraviolet light) source] should be UV (ultraviolet) light source.
- i. 10:20: PEL should be spelled out because while the use of acronyms is acceptable, each should be spelled out at least at the first occurrence.
- j. 11:12: [(permissible exposure level limits)] should be (permissible exposure level) limits.
- k. 11: 14: [Table 1] should be Table 2.
- l. 11:21: [and] should be an.
- m. 12:25: [toxins] should be toxins.
- n. 12:26:[size] should be sized.
- o. 12:27 [can] should be , can.
- p. 13:8: [doomed] should be domed.
- q. 15:22-24: because this sentence is repetitive of the sentence at 12:18-20, consideration should be given to delete one of the sentences.

Appropriate correction is required.

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6. The use of the trademark TEFLON has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Objections*

7. Claims 3 and 5 are objected to because of the following informalities:

- Claim 3: improperly depends upon itself. For this Office action, claim 3 has been treated as dependent upon claim 2, which provides antecedent basis for “the poles” as recited therein.
- Claim 5: multi-layer is misspelled.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 5 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Hilbert (US-6192633).

a. Claim 1: Hilbert discloses a tent enclosure 100 comprising a collapsible frame 200; and a flexible and foldable sheet material 400, 700 that is supported by the frame 200, the sheet material is impervious to biological and chemical airborne agents (waterproof, flexible, tear-resistance material 12:45-46; more durable materials may be used in accordance with the needs of the occupants and the nature of the environment to which the enclosure is exposed 12:49-52). Hilbert inherently includes sheet material being impervious to biological and chemical airborne agents sealing the occupants from the biological and chemical airborne agents and nuclear fallout (an airtight and water tight environment enables use of the protective enclosure in contaminated or hazardous environments 6:53-56).

b. Claim 2: The poles (inflatable support members or tubes 200) are arranged in a cross-configuration to one another (e.g., FIG. 1), wherein the poles are fit within sleeve portions on the sheet material (inflatable supporting members 200 are preferably retained or pocketed against the sheet material 400, 9:27-30; the pockets are referred to as sleeves



at 9:35). Further, the enclosure can include tensioning rods for enforcing the network of inflatable support members (22:63-65).

c. Claim 5: The walls of Hilbert are dome shaped and are attached to a floor portion to form a sealed enclosure (7:28-33).

d. Claim 11: The zipper (sealing means 600) is airtight and (inherently) water tight (e.g., 14:1-5, 14:9-15).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilbert (US-6192633) in view of Tate (US-2002/0020439).

Hilbert discloses a tent enclosure 100 comprising a collapsible frame 200; and a flexible and foldable sheet material 400, 700 that is supported by the frame 200, the sheet material is impervious to biological and chemical airborne agents (waterproof, flexible, tear-resistance material 12:45-46; more durable materials may be used in accordance with the needs of the occupants and the nature of the environment to which the enclosure is exposed 12:49-52). Hilbert inherently includes sheet material being impervious to biological and chemical airborne agents sealing the occupants from the biological and chemical airborne agents and nuclear fallout (an airtight and water tight environment enables use of the protective enclosure in contaminated or hazardous environments 6:53-56). The poles (inflatable support members or tubes 200) are arranged in a cross-configuration to one another (e.g., FIG. 1), wherein the poles are fit within sleeve portions on the sheet material (inflatable supporting members 200 are preferably retained or pocketed against the sheet material 400 9:27-30; the pockets are referred to as sleeves at 9:35). Further, the enclosure can include tensioning rods for enforcing the network of

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inflatable support members (22:63-65). Hilbert is silent as to the specific structure of the tensioning rods.

Tate teaches the use of telescopic tensioning rods for a collapsible domed tent frame. The telescoping rods permit the tensioning rods to be collapsed into smaller pieces for ease when transporting and storing the enclosure.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tensioning rods of Hilbert to include telescoping rods, such as suggested by Tate, in order to permit the tensioning rods to be collapsed into smaller pieces for ease when transporting and storing the enclosure.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilbert (US-6192633) in view of Gocher (EP-0075483-A1).

Hilbert discloses a tent enclosure 100 comprising a collapsible frame 200; and a flexible and foldable sheet material 400, 700 that is supported by the frame 200, the sheet material is impervious to biological and chemical airborne agents (waterproof, flexible, tear-resistance material 12:45-46; more durable materials may be used in accordance with the needs of the occupants and the nature of the environment to which the enclosure is exposed 12:49-52). Hilbert inherently includes sheet material being impervious to biological and chemical airborne agents sealing the occupants from the biological and chemical airborne agents and nuclear fallout (an airtight and water tight environment enables use of the protective enclosure in contaminated or hazardous environments 6:53-

56). The poles (inflatable support members or tubes 200) are arranged in a cross-configuration to one another (e.g., FIG. 1), wherein the poles are fit within sleeve portions on the sheet material (inflatable supporting members 200 are preferably retained or pocketed against the sheet material 400, 9:27-30; the pockets are referred to as sleeves at 9:35). Hilbert is silent as to the specific construct of the enclosure sheet material that protects the occupants from hazardous elements outside the enclosure.

Gocher teaches a multi-layer sheet material for use in a hazardous environment protection enclosure in order to provide sufficient barrier against the hazardous elements outside the enclosure.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sheet material of Hilbert to include more than one layer, such as suggested by Gocher, in order to provide an additional barrier against hazardous elements outside the enclosure.

11. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilbert (US-6192633) in view of Haughey (US-5140980).

a. Claim 6: Hilbert discloses a tent enclosure 100 comprising a collapsible frame 200; and a flexible and foldable sheet material 400, 700 that is supported by the frame 200, the sheet material is impervious to biological and chemical airborne agents (waterproof, flexible, tear-resistance material 12:45-46; more durable materials may be used in accordance with the needs of the occupants and the nature of the environment to which

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the enclosure is exposed 12:49-52). Hilbert inherently includes sheet material being impervious to biological and chemical airborne agents sealing the occupants from the biological and chemical airborne agents and nuclear fallout (an airtight and water tight environment enables use of the protective enclosure in contaminated or hazardous environments 6:53-56). Hilbert includes an environmental control unit 900 that is capable of filtering outside air into breathable and non-harmful inside air (15:43-44). Hilbert protects the occupants from biological and chemical airborne agents; however, the reference is silent as to the particular type of filter used in the filtering process of the environmental control unit.

Haughey teaches the use of a multi-stage air filter 20 that cleans air entering an enclosure containing air used by an occupant of the enclosure, e.g., a mask. Although the multi-stage filter is used on a mask, it would have been within the level of ordinary skill to modify the filter of Hilbert to include a multistage filter that is impervious to biological and chemical airborne agents sealing occupants from biological and chemical airborne agents and nuclear fallout (2:6-18) in order to protect the occupants from the ill effects of biological and chemical airborne agents and nuclear fallout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the environmental control unit filter of Hilbert to include a multi-stage filter that cleans contaminated air entering into the enclosure, as suggested by the multi-stage filter of Haughey, in order to protect the occupants from the ill effects of biological and chemical airborne agents and nuclear fallout.

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b. Claim 7: Further, in the combination, Hilbert inherently includes a blower insofar as it renders a positive pressure environment within the enclosure (15:14).

12. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilbert (US-6192633) and Haughey (US-5140980) as applied to claim 7 above, and further in view of Baldwin (US-5537784).

The Hilbert and Haughey combination is a pressurized enclosure, but it is silent as to the ventilation system that is used.

Baldwin includes one-way pressure valves (e.g., 66a, 66b, 68a, 68b in FIG. 3) to vent air from enclosure when the pressure in the chamber reaches a certain level (6:35-37). The release valves would prevent the enclosure from splitting due to over pressurization and from collapsing due to under pressurization.

Therefore, in the pressurized system of Hilbert and Haughey, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the enclosure to include a release valve, such as suggested by Baldwin, in order to prevent the enclosure from splitting due to over pressurization and from collapsing due to under pressurization.

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13. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hilbert (US-6192633) in view of Sutton (US-5706846).

Claims 6 and 9: Hilbert discloses a tent enclosure 100 comprising a collapsible frame 200; and a flexible and foldable sheet material 400, 700 that is supported by the frame 200, the sheet material is impervious to biological and chemical airborne agents (waterproof, flexible, tear-resistance material 12:45-46; more durable materials may be used in accordance with the needs of the occupants and the nature of the environment to which the enclosure is exposed 12:49-52). Hilbert inherently includes sheet material being impervious to biological and chemical airborne agents sealing the occupants from the biological and chemical airborne agents and nuclear fallout (an airtight and water tight environment enables use of the protective enclosure in contaminated or hazardous environments 6:53-56). Hilbert includes an environmental control unit 900 that is capable of filtering outside air into breathable and non-harmful inside air (15:43-44). Hilbert protects the occupants from biological and chemical airborne agents; however, the reference is silent as to the particular type of filter used in the filtering process of the environmental control unit.

Sutton teaches a multi-stage filtering system including two filters: a high efficiency particulate air (HEPA) filter (122) that removes any particles at least approximately 0.3 microns in size (any particulate larger than 0.1 microns in size including bacteria and viruses 7:39-43) and an activated charcoal filter (124) for removing toxic gases.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the environmental control unit filter of Hilbert to include a multi-stage filter that cleans contaminated air entering into the enclosure, as suggested by the multi-stage filter of Sutton, in order to protect the occupants from the ill effects of bacteria, viruses, and toxic gases.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hilbert (US-6192633).

Claim 10: Hilbert discloses a tent enclosure 100 comprising a collapsible frame 200; and a flexible and foldable sheet material 400, 700 that is supported by the frame 200, the sheet material is impervious to biological and chemical airborne agents (waterproof, flexible, tear-resistance material 12:45-46; more durable materials may be used in accordance with the needs of the occupants and the nature of the environment to which the enclosure is exposed 12:49-52). Hilbert inherently includes sheet material being impervious to biological and chemical airborne agents sealing the occupants from the biological and chemical airborne agents and nuclear fallout (an airtight and water tight environment enables use of the protective enclosure in contaminated or hazardous environments 6:53-56). Although Hilbert is silent as to the exact size of the enclosure one embodiment is of a size that holds at least two occupants (e.g., FIG. 9). The examiner takes Official notice each person would require sufficient air and space within



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adequate space for essential food and personal items. One of ordinary skill in the art would have been able to determine the adequate size of six feet by nine feet by seven feet high as adequate for two occupants.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hilbert to be six feet by nine feet by seven feet high to provide sufficient volume of air and space for two occupants.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Wang (US-6892742) teaches the use of either internal or external tensioning poles for a tent (FIGS. 1, 2).
- Murphy (US-6875119) teaches an enclosure having a double entrance.
- Brown (US-6554013) teaches a collapsible environmental protection system.
- Gauger (US-6321764) teaches a self-contained unit having an environmental control system.
- Bongiovanni (US-6001057) teaches a self-contained unit having an environmental control system.
- Gallant (US-5913322) teaches a domed tent having external frame that slides through sleeves 24 in the enclosure.
- Lee (US-5628336) teaches a telescoping pole assembly for a domed tent (FIG. 1).
- Baldwin (US-5537784) further teaches walls of an enclosure that are seven feet high and accommodate up to eight occupants (4:55-67).
- Meyer (US-5479744) teaches telescoping rods that are connected using an outer tube 22 (FIG. 4).
- Anderson (US-4707953) teaches a gas particulate filter unit 22 and blower 20. Anderson depicts a monitoring system for the enclosure (e.g., FIG. 3-6).
- Hampel (US-4625468) teaches a fallout shelter.
- Prinz (US-3547136) teaches a domed enclosure that can be sized for multiple occupants (1:52-53; 3:14; 3:39).
- Matthews (US-3272199) teaches a transparent airtight enclosure.
- Forbes (US-3213868) teaches a fallout shelter 20 having a special cover material 23 impervious to fallout dust and radioactivity (1:10-13). The enclosure includes resealable flaps 31, 32 for access door and ventilation (2:33-38). The enclosure is supported on a collapsible frame 22.

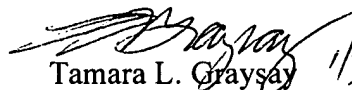
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- Colson (US-3119358) further teaches a collapsible tent enclosure comprising a flexible and foldable sheet material 7 that is supported by hook 31 and eye 33 connection to a rod 29, the sheet material is impervious to biological and chemical airborne agents, and the enclosure seals occupants from the biological and chemical airborne agents and nuclear fallout. The enclosure further includes a window 45 made of a material impervious to radiation. The shelter includes means for filtering and reducing radiation in air supplied to the shelter. The inlet is an activated carbon filter 67 into a duct 65 that is lined with a material to absorb radioactive rays. A blower 75 at the outlet 77 draws the air into the enclosure.
- Hunter (US-2297150) teaches a box 35 containing a blower and filter unit (2:57-58). The enclosure is dome shaped (FIG. 1). The sill strips 25 connect the floor 26 and the walls 1, 2 of the enclosure.
- Torres-Badash (US-2004/0060589) teaches an enclosure having telephone and electricity therein via an interface panel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo, can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tamara L. Graysay 1/30/06  
Examiner  
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